

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT FOR August 22, 2019 @ 7pm

Case Number: B-19-26 AP# 19675

Applicant: Edward Lupcho Jr.

Appeal: Requesting approval of a Variance of 30 feet to the required 50-foot front building restriction line and to allow Activity within a Floodplain under Ordinance Sec.1-19-9.120 Procedures for Activities within the FEMA Floodplain District

Location: Property described as 6931 Burkettsville Road, Middletown MD 21769. Tax Map 65, Parcel 22, Tax ID 03-127583, 29.95 Acres, Zoned, Resource Conservation (RC)

Planning Region: Middletown

Zoning District: Resource Conservation (RC)

Comp. Plan Designation: Natural Resources

Applicable Ordinances: Sec. 1-19-3.220 Variance
Sec. 1-19-6.100 Design Requirements
Sec. 1-19-9.120 Procedures for Activities Within the
FEMA Floodplain

Background:

The subject parcel is zoned Resource Conservation (RC) and contains 29.95 acres. The subject property contains considerable FEMA Floodplain as well as Flooding Soils.

Proposal:

Requesting approval of a Variance of 30 feet to the 50-foot required front building restriction line and to allow Activity within a Floodplain under Ordinance Sec.1-19-9.120 Procedures for Activities within the FEMA Floodplain. The majority of the property lies within the FEMA Floodplain Zone A and its associated 25-foot buffer, both are depicted on the Board of Appeals Exhibit accompanying this submission. The existing well is located 2.2 feet within the FEMA floodplain Zone A 25-foot buffer. There is also flooding soil (CgA) on most of the property. The area outside of all of these constraints is also encumbered by steep slopes 25% or greater.

General Criteria - Variance:

Under the provisions of Section 1-19-3.220(C) of the County Zoning Ordinance, the Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:

- (A) The Board of Appeals may authorize a variance in height, lot area and yard regulations.

The Applicant is requesting a variance of 30' ft from the required 50' ft front yard setback from the 'yard' regulations as listed under Section 1-19-6.100.

- (B) An application for a variance shall be filed with the Board of Appeals only after refusal of zoning approval or an adverse determination has been issued by the Zoning Administrator.

The applicant met with the Zoning Administrator who determined that a variance from the required property line setbacks was needed.

- (C) The Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:

The public hearing is scheduled for August 22, 2019.

- (1) First, the Board of Appeals shall find that special conditions and circumstances exist which are unique to the land or structure involved and which are not applicable to other lands or structures in the same district.

The parcel contains 29.952 acres and lies almost entirely within the FEMA Floodplain Zone A, the required 25' floodplain buffer, and floodplain soils (CgA). The remaining portion not in the above is steep with the majority of the useable land being 25% or greater slopes. The approved septic and proposed house are sited on the northern portion of the parcel in the only buildable land on the parcel.

- (2) Upon making this finding the Board of Appeals shall also find that the following criteria are met:

- (a) That the special conditions and circumstances do not result from the actions of the applicant; and

The applicant has not created the special conditions and circumstances.

- (b) The literal interpretation of the provisions of this chapter would result in unreasonable hardship and deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this chapter; and

The literal interpretation of the provisions of this chapter would deny the applicant of rights commonly enjoyed by other properties in the same district by not being able to construct even a modest house (as proposed) on this parcel of land.

- (c) That granting the variance will not confer on the applicant any special privilege that is denied by this chapter to other lands or structures in the same district; and

Granting this variance does not confer on the applicant any special privilege. That is denied by this chapter to other lands or structures in the same district.

- (d) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Granting of this variance is in harmony with the general purpose and intent of this chapter by allowing a home to be constructed and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- (D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of this chapter.

The applicant understands this.

- (E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved, or any use expressly or by implication prohibited by the terms of this chapter in said zone.

The applicant understands this.

- (F) Under no circumstances shall the Board of Appeals grant a variance to a nonconforming structure for the portion of structure determined by the Zoning Administrator to be nonconforming.

The applicant understands this.

- (G) A decision of the Board of Appeals granting a variance will be void 2 year from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The applicant understands this.

§ 1-19-9.120. PROCEDURES FOR ACTIVITIES WITHIN THE FEMA FLOODPLAIN.

- (A) The Board of Appeals shall review the following activities within the FEMA floodplain: substantial improvements, substantial improvements due to existing structures substantial damage, replacement or relocated dwelling units (including manufactured homes), the addition of accessory buildings, the expansion or replacement of an existing nonconforming use, or development of an existing parcel of record lying totally within the FEMA floodplain. Applications to allow new structures or fill to be placed in the floodway shall not be considered. The Board of Appeals may grant an application for approval for activity within the FEMA floodplain when the Board specifically finds that:

- (1) Failure to grant the application for approval would result in exceptional hardship to the applicant; and

The applicant states that denying approval to construct a home on the parcel would result in exceptional hardship to the applicant, because the proposed house area is the only area within the parcel that is outside of the Floodplain, Floodplain buffer and does not impact 25% or greater slopes. The home is not located within the FEMA Floodplain or FEMA Floodplain Zone A 25-foot buffer. The Floodplain disturbance is a 2.2 foot long area for the well and waterline trenching.

- (2) The granting of an application for approval would not increase flood heights, add threats to public safety, result in extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and

The applicant states that the proposed construction will not increase flood heights, add threats to public safety, result in extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances. A single family home built on this parcel, would not create a nuisance, cause fraud, victimize the public or be in conflict with local laws that allow for such development as a principal permitted use.

- (3) The granting of an application for approval would not allow new structures or fill to be placed in the floodway; and

The applicant states that the proposed house construction will not occur in a floodway.

- (4) The granting of an application for approval is the minimum necessary considering the flood hazard to provide relief and that public funds may not be available to mitigate the results of the approval; and

The applicant states that no mitigation, especially mitigation requiring public funds, will be necessary as a result of an approval.

- (5) All new structures and substantial improvements to existing structures will have the lowest floor elevated to the greatest extent possible with respect to the 100 year flood elevation, but at least to the Flood Protection Elevation, and a FEMA elevation certificate filed. In addition, all structures, including manufactured homes, must be firmly anchored in accordance with acceptable engineering practices (i.e., FEMA publication 85 "Manufactured Home Installation in Flood Hazard Areas"); and

The applicant understands this.

The granting of a permit by the Maryland Department of the Environment if located within a FEMA floodplain; and

The applicant understands this.

- (6) The action is duly recorded with the deed of the property on which the application for approval is granted prior to the issuance of a building permit. Any expense incurred by the recording is the responsibility of the applicant.

The approval of the Board, if granted, will be recorded with the deed of the property at the Applicant's expense, prior to issuance of a building permit.

- (7) The Board of Appeals shall not grant approval of the above activities for lots containing floodplain created after June 6, 1989.

The applicant understands this.

(B) The Board of Appeals will notify the applicant of approval in writing through the Zoning Administrator. The decision of approval and findings shall include the notification that:

- (1) The issuance of a decision to allow construction of a structure below the 100 year flood level will result in increased premium rates for flood insurance;

The applicant understands this, however it does not apply to this case.

- (2) Such construction below the 100 year flood level increases risks to life and property.

The applicant understands this.

(C) The Board of Appeals will maintain a record of all decisions, including justification for their issuance, and the Zoning Administrator will report such decisions in the county biennial reports submitted to the Federal Emergency Management Agency.

The applicant understands this.

Actions Needed

Staff requests that the Board review the general criteria for a Variance of 30 feet to the required 50-foot front building restriction line under Section 1-19-3.220 (Variances) and to allow Activity within a Floodplain under Ordinance Sec.1-19-9.120 Procedures for Activities within the FEMA Floodplain District for a 2.2 foot long area for the well and waterline trenching and render a decision on the Applicant's request.

Site Maps:



